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Federal Communications Commission
Office of the Secretary

May 22, 1992

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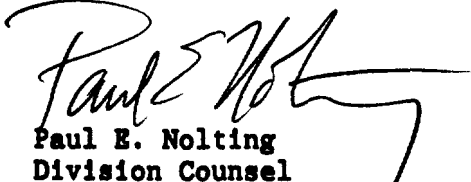
Donna Searcy, Secretary
Federal Communications Commission
1919 M Street, N. W., Rm. 6767
Washington, DC 20554

Re: In the Matter of the Telephone Consumer Protection Act of 1991
CC Docket No. 92-90

Dear Ms. Searcy:

Enclosed please find the original and nine (9) copies of the Comments of Unisys Corporation Concerning Proposed Regulations Implementing the Telephone Consumer Protection Act of 1991. We ask that these documents be filed in the above captioned proceeding. Under cover of copies of this letter, we are also submitting copies of the enclosed Comments to the other parties named in our Certificate of Service.

Very truly yours,


Paul E. Nolting
Division Counsel
Airlines and Communications
Systems Division

PEN/nk

Enclosure

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of

The Telephone Consumer Protection
Act of 1991

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Comments of Unisys Corporation Concerning Proposed
Regulations Implementing the Telephone Consumer Protection
Act of 1991

May 22, 1992

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Comments of Unisys Corporation Concerning Proposed
Regulations Implementing the Telephone Consumer Protection
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Unisys Corporation is pleased to submit its comments in response to the Commission's Notice of Proposed Rulemaking in CC Docket No. 92-90 ("the NPRM") which proposes regulations to implement the Telephone Consumer Protection Act of 1991.¹

I. Introduction and Summary

Unisys is a Fortune 50 company which designs, develops, manufactures and markets computer and telecommunications equipment, software and services. Unisys products include the Network Applications Platform ("NAP"), a multi-purpose system for providing enhanced services. In the United States, NAP is currently being used by some of the Regional Bell Operating Companies and by the Puerto Rico Telephone Company. Overseas installations include sites in Japan, New Zealand, and the Netherlands. NAP-based services can include a wide range of applications, such as large-scale voice messaging, fax store-and-forward and automatically dialed collection reminders to telephone company subscribers. Unisys products also include central-office based equipment for delivery of coin telephone voice message service.

Unisys comments in this proceeding address two concerns. First, because both the Act and the proposed regulations speak broadly in terms of telephone calls which use a "prerecorded voice", Unisys urges the Commission to explicitly implement the intention of Congress to exclude voice messaging services from coverage by the TCPA.

¹ The Telephone Consumer Protection Act of 1991, Public Law 102-243, 47 U.S.C. sec. 227, amending Title II of the Communications Act of 1934, 47 U.S.C. sec. 201 et seq. ("the TCPA" or "the Act").

Second, Unisys supports the Commission's observations that there are circumstances in which the use autodialer messages can be an efficient and effective means of communication.² We offer comments from our own experience in the marketplace to support this view, and we support adoption of the exemptions proposed in the NPRM.

II. TCPA Regulations Should Clearly Implement Congressional Intent to Exempt Voice Messaging Services

Both the Act and the Commission's proposed regulations impose broad restrictions on the automatic delivery of recorded messages to residential telephone lines. The TCPA provides in part that:

It shall be unlawful for any person within the United States...

(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B). (emphasis added).³

In other words, most calls delivering a recorded message are prohibited unless they fall within a specific exemption allowed by the Commission.

The regulations proposed by the Commission to implement the Act repeat the statutory prohibition,⁴ and go on to create four exemptions.⁵ Two of these exemptions depend upon the purpose of the call.⁶ One depends upon the

² NPRM, at 4 and 6

³ TCPA, sec. 227 (b)(1)(B)

⁴ NPRM, Appendix B, sec. 64.1100 (a) (1)(2)

⁵ Id., sec. 64.1100 (a)(1)(2)(c)

⁶ Id., sec. 64.1100 (a)(1)(2)(c)(1) and (2)

relationship between the caller and the recipient.⁷ The last depends upon the identity of the caller.⁸ None of the proposed exemptions address the nature of the service used to deliver the message. The proposed regulations, therefore, do not draw a distinction between prerecorded telemarketing messages addressed from one sender to a large number of recipients, on the one hand, and voice mail messages addressed by a sender to one (or in some cases, a few) recipient on the other.

It is clear, however, that Congress was not legislating against the commercial use of enhanced services such as voice messaging. The Congressional findings recited in the Act make repeated mention of telemarketing as the activity Congress intended to regulate.⁹ Both the legislative findings stated in the Act ¹⁰ and the floor debate prior to enactment¹¹ clearly indicate that intrusive telemarketing practices were the object of public concern that brought about the Congressional action. The Act makes no mention of enhanced services such as voice mail or coin voice messaging.

When he presented the TCPA on the floor of the House of Representatives, Congressman Markey gave an example of how a coin voice message service might be used by an air traveler. He commented that "such a voice messaging service is a benefit to consumers and should not be hindered by this

⁷ Id., sec. 64.1100 (a)(1)(2)(c)(3)

⁸ Id., sec. 64.1100 (a)(1)(2)(c)(4)

⁹ E.g., TCPA, sec. 2 (1), (2) and (4)

¹⁰ Id., sec. 2(6)

¹¹ E.g., Remarks of Mr. Markey, 137 Cong. Rec. H 11307, at H11310, Nov. 26 1991: "[T]he nightly ritual of phone calls to homes from strangers and robots has many Americans fed up."

legislation."¹² Mr. Markey made this remark as part of an explanation of the Commission's authority to grant exemptions from the Act's prohibitions for calls that do not adversely affect the privacy interests the bill was intended to protect.¹³ To underline the distinction between telemarketing activity covered by the Act and enhanced services which are not intended to be covered, the Congressman noted "I fully expect the Commission to grant an exemption...for voice messaging services that forward calls."¹⁴

In other proceedings in recent years, the Commission has given careful consideration to regulatory issues raised by enhanced services such as voice messaging.¹⁵ There is no serious dispute that such services are beneficial to the public. The Commission has made clear its determination to adopt a regulatory regime which promotes the broadest possible availability of such services.¹⁶

While many of the potential commercial uses of enhanced services would arguably fall within the exemptions to the TCPA proposed by the Commission, Unisys believes that it would be appropriate for the Commission to recognize explicitly the intention of Congress to distinguish between "one-to-many" recorded telemarketing messages, which are regulated by the Act, and "one-to-one" (or few) recorded voice mail messages, which are not. We therefore urge the Commission to adopt an additional exemption for commercial use of

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ E.g. In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623 Report and Order, Dec. 20, 1991.

¹⁶ Id. at para. 2, 6 and 7

enhanced services such as voice messaging, offered by local exchange carriers or other enhanced service providers. An explicit exemption would make more clear the intended scope of the Act and its implementing regulations, and avoid further complicating the already complex regulatory issues surrounding enhanced services.

III. TCPA Regulations Should Be Carefully
Drawn to Avoid Inhibiting Uses of Automatic
Dialing Equipment Which Benefit the Public

Unisys urges the Commission to avoid taking any action under the TCPA which would inhibit unnecessarily the use of automatic dialing equipment in ways that benefit the public. As noted above¹⁷, Unisys manufactures and markets computer hardware and software, including telecommunications products, both in the United States and overseas. Unisys is familiar with applications of autodialer technology because its product lines include equipment which may be used for this purpose.

For example, one user of the Unisys Network Applications Platform is currently using a system which delivers payment reminders to its telephone service subscribers. The system in use places three types of calls. The first is sent when a bill is being issued. It informs the subscriber that the bill is being sent and reminds the recipient to make timely payment.

¹⁷ Supra, Introduction and Summary

The second type of call is placed to delinquent accounts. It reminds the subscriber that payment is past due, and tells him or her when service will be discontinued. The third type of call is placed to subscribers whose service has been discontinued. In this case, the system temporarily reconnects service, reminds the customers that payment is past due and tells him or her when payment must be made before the subscriber's former number will be reallocated to another customer.

The public benefits of this type of system are apparent. Use of this system has increased the payment rate, decreased delinquent accounts and improved cash flow for the Unisys customer. Public reaction has been positive. Subscribers recognize that the telephone reminders are more effective than mailed notice, and help avoid the inconvenience of a service disruption due to inadvertent nonpayment. Improved cash flow and reduced bad debt expense reduce overall costs, benefitting ratepayers. Automatically dialed reminders reduce unnecessary service terminations, and could be very helpful to some customers who may need assistance in managing their personal affairs.¹⁸

Based upon our experience in this emerging market segment, Unisys believes that there are many non-intrusive, beneficial applications of autodialer

¹⁸ Many utilities, for example, offer third party notification services, in which customers who may sometimes need assistance with their affairs can designate a friend or family member to receive a copy of any notice to discontinue service for non-payment. An auto dialer might be programmed to give such third party notifications by telephone at the time a termination notice is mailed.

technology which may emerge.¹⁹ It would be an unfortunate disservice to the public if concern over the misuse of the technology by some telemarketers prompted the adoption of overly restrictive regulations which misconstrue congressional intentions and stifle further development.

Subject to the comments made in Point I above concerning the need to add an explicit exemption for certain enhanced services, Unisys supports the approach taken by the Commission to adopt exemptions which may cover broad use of autodialer technology. We believe that the exemptions proposed in the NPRM will address public concern over intrusive telemarketing practices, while permitting the continued emergence of new and beneficial uses of auto dialer technology by commercial enterprises, government agencies, charitable organizations and others who have a need to communicate quickly, directly and effectively at low cost with a relatively large number of people. We urge the Commission to survey emerging auto dialer services periodically to determine whether additional specific exemptions are appropriate.

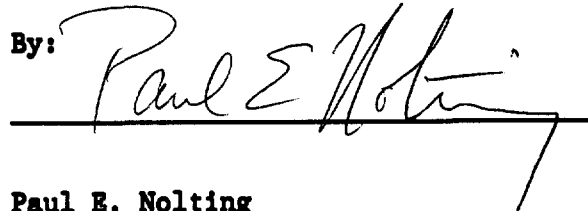
¹⁹ The Commission has already noted a number of possible commercial applications of autodialer systems. NPRM at para. 11. It is possible to imagine many others; e.g. last minute notification of airline passengers that flights have been delayed or cancelled; notification to large numbers of users of a particular prescription drug or medical device to contact their physicians for additional advise or health warnings; auto recall notices involving imminent threats to safety, etc.

V. CONCLUSION

Accordingly, Unisys urges the Commission to adopt regulations to implement the Telephone Consumer Protection Act of 1991 which explicitly exempt enhanced services such as voice messaging. Unisys also supports the adoption of the exemptions proposed in the NPRM, and asks that the Commission consider the adoption of additional exemptions as appropriate to promote the growth of new and useful applications of autodialer technology which may benefit the public.

Respectfully submitted,
UNISYS CORPORATION

By:

A handwritten signature in cursive script, appearing to read "Paul E. Nolting", is written over a horizontal line.

Dated: May 22, 1992

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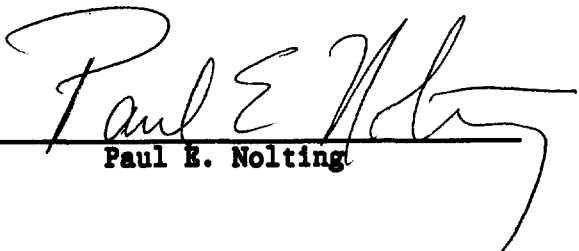
CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of May, 1992, copies of the
foregoing Comments of Unisys Corporation Concerning Proposed Regulations
Implementing the Telephone Consumer Protection Act of 1991 were sent,
postage prepaid, to the parties listed below.

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